MONTANA LEGISLATIVE HISTORY

Chapter 567 19 77

Bill H 302 S _____ Original bill & history ✓ C

H. Committee on State Admin.			S. Committee on State Admin		
Hearing Date(s)	1-27	✓ C	Hearing Date(s)	_____	___ C
	_____	___ C		3/16	✓ C
	_____	___ C		3/30	___ C
	_____	___ C		_____	___ C
Date Out	2-4	✓ C		out 3/30	✓

Did this bill originate in an interim committee? ___ Yes ✓ No

Committee _____ Report _____

LC 0177/01

H BILL NO. 302

INTRODUCED BY Melby Vincent Hoyer Hueners Dussault Aklestad

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE OPEN MEETINGS LAW; ALLOWING CLOSED MEETINGS FOR DISCUSSIONS OF COLLECTIVE BARGAINING OR LITIGATION; DEFINING APPROPRIATE MINUTES AND MEETINGS; REQUIRING ADVANCE WRITTEN NOTICE OF MEETINGS; PERMITTING TAPE RECORDING OF OPEN MEETINGS; PROVIDING FOR VOIDABILITY; AMENDING SECTIONS 82-3402 and 82-3403, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-3402, R.C.M. 1947, is amended to read as follows:

"82-3402. Meetings of public agencies to be open to public -- exceptions. All meetings of public or governmental ~~bodies, boards, bureaus, commissions or~~ agencies (as defined in 82-4227) of the state or any political subdivision of the state, or ~~organization~~ organizations or agencies supported in whole or in part by public funds, or expending public funds, ~~at which any action is taken by such public governmental body, board, bureau, commission or agency of the state or any political subdivision of the state~~ shall be open to the public. Provided, however, the presiding officer of any meeting may close the meeting during the time ~~any of the following items are discussed,~~ the discussion relates to a matter of individual privacy, and then if, and only if, the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure~~.~~. However, a meeting may be closed to discuss a strategy to be followed with respect to collective bargaining or litigation when an open meeting would have a detrimental effect on the bargaining or litigating position of the public agency.

~~(1) The disciplining of any public officer or employee, or any hearing on, or of, a complaint against a public officer or employee, unless the public officer or employee requests an open meeting.~~

~~(2) The employment, appointment, promotion, dismissal, demotion or resignation of any public officer or employee, unless the public officer or employee requests an open meeting.~~

~~(3) The revocation of a license of any person licensed under the laws of the state or any political subdivision of the state, unless the person licensed requests an open meeting.~~

~~(4) Law enforcement, crime prevention, probation or parole.~~"

Section 2. There is a new R.C.M. section in Title 82, chapter 34, that reads as follows:

Meeting defined. As used in this chapter, "meeting" means the convening of a quorum of the constituent membership of a public agency, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

Section 3. There is a new R.C.M. section in Title 82, chapter 34, that reads as follows:

Notice. (1) All public agencies shall give written public notice of any regular, special, or rescheduled meeting required to be open no later than 72 hours before the meeting. The notice shall include the agenda, date, time, and place of the meeting.

(2) Written public notice shall include but need not be limited to:

(a) either publication in the Montana administrative register or posting at the principal office of the public body or agency holding the meeting or, if no such office exists, at the building in which the meeting is to be held and in at least three other prominent places within the governmental unit; and

(b) mailing a copy of the notice to any person who requests notice of such meetings. Any such person shall be given notice of all special or rescheduled meetings in the same manner as is given to members of the public body or

agency.

(3) In case of emergency situations, notice of a meeting may be given under 19-201 and not be subject to subsection (1) of this section.

Section 4. Section 82-3403, R.C.M. 1947, is amended to read as follows:

"82-3403. Minutes of meetings -- public inspection. (1) Appropriate minutes of all meetings ~~declared~~ required to be open, shall be kept and shall be available for inspection by the public.

(2) Such minutes shall include without limitation:

(a) date, time, and place of meeting;

(b) a list of the individual members of the public body or agency in attendance; and

(c) the substance of all matters proposed, discussed, or decided and, at the request of any member, a record, by individual members, of any votes taken."

Section 5. There is a new R.C.M section in Title 82, chapter 34, that reads as follows:

Recording. All or any part of a meeting of a public body or agency required to be open may be recorded by any person in attendance, by means of a tape recorder or any other means of sonic reproduction, as long as the act of recording does not actively interfere with the conduct of the meeting.

Section 6. There is a new R.C.M. section in Title 82, chapter 34, that reads as follows:

Voidability. Any agency decision made in violation of 82-3402 or [section 3 of this act] may be declared void by a district court having jurisdiction. A suit to void any such decision must be commenced within 90 days of the decision.

-End-

STATE ADMINISTRATION COMMITTEE

45 Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
275	to provide that certificates of volunteer fire companies shall be filed annually instead of quarterly	1-19-77	MULAR	1-24-77	DO PASS	1-25-77
289	to change the composition of the teachers' retirement board	1-20-77	QUILICI	1-27-77	As Amended Do Pass	1-28
302	revising open meetings law-allowing closed meetings for discussions of collective bargaining or litigation defining minutes & meetings, requiring written notice....taping	1-10-77	MELOY	1-27-77	Put in Sub. Comm. w/249 Do Pass, As Amended	2-7
322	revising minimum price fixing of milk at wholesale & retail level so to prohibit sale of milk as a loss leader in markets-to est. maximum price fixing at wholesale/retail level	1-21-77	METCALF	1-31-77	Referred to Business + Industry	1-26
328	to change name of board of admin. of dept. of admin. to "public emp. retirement board"..consolidation of montana state wardens'/&montana judges retirements boards	1-21-77	MENAHAN	1-28-77	Do Pass	1-28
335	to provide for credit for service in the montana legislature for members of the highway patrolmen's retirement system	1-21-77	O'CONNELL	1-28-77	held for inclusion of other departments extensive amendments presented 2-7-77 TABLED - Bill	

STATE ADMINISTRATION COMMITTEE January 27, 1977

The meeting was called to order by Chairman Brand, all members were present.

Dick Hargesheimer submitted his summary, see attachment #1.

The Chairman turned the chair over to Vice Chairman Lien in order to speak as the sponsor of HB 375 and HB 376.

HB 375-This bill amends Section 78-202, R.C.M. 1947 - relative to the Veterans' & Pioneers' Memorial Building. The veterans should have had the third floor. Subsection (3) says that appropriate space should be provided in the third floor for the secretary, their library, etc.

TONY CUMMING, American Legion--At the time the building was built, it was financed with veterans' funds. All this bill does is specify that the third floor will be used for veterans and pioneers. We are afraid that the shortage of room that the Historical Society is facing will put us in jeopardy. We have introduced this as a precautionary measure for the years to come.

BOB DURKEE, VFW--We also have an office here. We are concerned that other organizations look fondly upon this space. People come up and measure our rooms and ask what we do there. We also received a letter from the DOCENTS, who conduct childrens' tours - they have a new process known as Touch & Feel, where they hand out artifacts and let the children handle them - they also use part of our office and are hoping to expand, and would like to put up a teepee in the office. We are fearful that they will usurp the entire meeting room.

OPPONENTS

KEN KORTE, Montana Historical Society--I don't really consider myself an opponent; but I would like to clarify something. I'd like to explain that DOCENTS means 'volunteer guide'. It is an organization of women who take children through museums. Touch & Feel tours are being used in every museum throughout the country.

The Society's occupation of the building has caused some problems lately. We feel they are misinterpreting our uses. We provide adequate office space for them; plus security, maintenance, lighting, etc. We let them use the third floor meeting room. Until we started using this for the childrens' tours, it was used by the Bicentennial Commission. Our use would not jeopardize their use of the room. This room is also used by many other organizations. We also provide room for their museum, which is not provided by statute; and give them a vault. I'm not saying that we don't want them to have the third floor, but I think it is a workable situation now. As long as they have the statutory authority to use the building we will let them have it.

BRAND-Did you say veterans' money built this? DURKEE-At one time there was a Veterans' Memorial Fund to collect 5% of the gross tax on athletic events in Montana. This put alot of money into the fund, along with some money from the Capitol Land Grant Fund. There is a bill down in the Senate regarding reestablishing a tax on boxing for this. The original law established use of the building, with furnishings, on a no-pay basis - along with custodial care, maintenance, and security. We are willing to assist with security now, since it concerns us more than before. We would consider using the building only when security allows it.

HB 302-Rep. Meloy, sponsor--The new Constitution was adopted with an open meetings provision, and the last few sessions have agreed. We have had experiences which have shown loopholes in the law as well as problems with the statute itself. Page 1 gives the definition of agencies already in the statute. The reason for the stricken material on page 1 - right now, meeting holders can avoid the law by not taking any action at the meeting. So, if you don't take any action it negates the whole thing. The Bozeman City Council closed their meeting simply because they weren't taking any action. The next change is on Page 2 - subsections (1) - (4) have been stricken--this pertains to specific instances for which a meeting can be closed, but they are not all encompassing. There are occasions when an agency is dealing with things of individual privacy which are only included in the existing points, such as the Human Rights Commission - of all of the complaints they receive, only 5% are meritorious. They are closing their meeting to dismiss these cases due to the personal embarrassment. So, specifically speaking, this meeting should be open. (he reviewed the same portion that was previously covered in Rep. South's HB 249) It has been found that this puts state and local government at a disadvantage when they have to have strategy sessions open. This would permit the strategy sessions to be closed, but the negotiations would be open. I have some mixed feelings, but the problems justify this exception. The next change is the addition of a new Section 2 - the definition of meeting - mentions quorum, and defines meeting as including the use of electronic devices (i.e. conference calls). This is consistent with the definition in the open meeting laws in Florida and Washington. We found that some constituent boards would have conference calls, and by using this, they have been able to have closed meetings. Section 3 provides for notice of meetings. I am not really hot for this, but we have to have a notice provision. Sometimes meetings have been closed simply by not giving notice. There has to be a notice provision. This can be a bad loophole. R.C.M. Section 82-3403 requires minutes of the meeting - this helps because some minutes taken have been disgusting. This requires a record of any votes taken. Section 5 permits the tape recording of a public meeting. Section 6 adds some substance to the law. Right now there is no strong reason for meeting holders to recognize the law. This section permits the voiding of a procedure by the courts when a meeting is illegal - if the action is taken within 90 days after the meeting. They might have this remedy now, but this gives a definite statute. We are taking out the provision for individuals to request open meetings. Anyone can do this through the waiver of individual privacy. On page 3, line 4 I would suggest adding the work "hear" before "discuss".

SAM GILLULY, Montana Press Association--(Please see attachment #2 for Mr. Gilluly's written statement) There is no more important matter from the standpoint of the press. I have cited some specific problems on my statement. These are priviledges of the people, and this is addressed to the people, not just the press.

RONALD SEMPLE, Publisher-Independent Record, Montana Press Association--The public's business should be conducted in public. I see no reason why any governmental agency should be allowed to conduct business in private.

DUNCAN CAMPBELL, Montana Standard--(he submitted written testimony, see attachment #4)

NATALIE CANNON, Common Cause--(she submitted written testimony, see attachment #3)

TOM SCHNEIDER, MPEA--We support this, and strongly support the amendments, particularly the right of an employee to ask for an open meeting in disciplinary action. Your only method of fighting this situation is by having open meetings with the press and the public there. We say we are clarifying, but every time management gets together,

it has a detrimental effect. Management has the right to do their strategy in private. We will support the bill with the amendments.

DON JUDGE, AFSCME & AFL-CIO--We support this. In an effort not to be redundant, you can refer to my testimony of yesterday on HB 249.

DUANE JOHNSON, Personnel Division, Department of Administration--One area of some concern that probably could be clarified - the new language on page 2 - as far as caucusses of governmental agencies being closed for strategy--I am uncertain as to the net effect. The language says they can be closed for strategy when an open meeting would be detrimental. In my judgement, from the history of collective bargaining, open meetings have an inherently detrimental effect, particularly where governmental agencies are required to have open meetings, and unions aren't. I think Meloy's language moves to correct this. I am not sure who will decide what is detrimental.

OPPONENTS

ROBERT LOHN, Governor's Attorney--We see these problems - the act was not worded well to begin with, but this would not include local councils. In order to insure total voidability of secret meetings, the definition must be clearer. There seems to be no provision for emergency meetings. The 72 hour notice provision cannot always be given. I remind you that we are well under the Right to Know. The legislature has executive sessions that are closed.

WAYNE BUCHANON, Montana School Board Association—I feel strange rising to oppose this, as several sections were added at our request, but there are a number of things that cause concern. Section 3, page 3, line 7 - the 72 hour rule would be very difficult for school boards in the case of emergency situations - we don't always have 72 hour notice ourselves. Some requirement of reasonable notice would be sufficient. We wouldn't object to having regular agendas published. Line 22 - mailing of notice to anyone who requests it. The Billings School Board might have 5,000 - 10,000 people on it's mailing list, and they meet at least once a week - so this would cause a hugh mailing. This committee would be required to give 72 hour notice, and would have to mail notices and agendas to anyone who wanted them. The rest of the bill we support. We don't want to go on record as opposing the public's right to know. We wouldn't want the meetings law done away with, but we think some work on Section 3 is in order.

CHAD SMITH, Montana School Board Association--We compliment Rep. Meloy, but we have some mixed emotions. As far as strategy sessions being closed, this is very important in the collective bargaining process. I do feel this particular provision is important. We do have some problems about the sections deleted on page 2, lines 10 - 17. We have numerous instances regarding employees' complaints, dismissal, resignation, disciplinary actions, etc. As the law reads now, the employees can have open meetings if they feel the action the board is taking should be exposed to the public. But when disclosure of these things could injure the individual, he should have the right to a closed meeting. We request that these provision should be retained. As far as HB 249, we would like the provisions allowing school board meetings to be closed for discussions of land acquisition. 72 hour provision - there are provisions in the school law where a student can be suspended until the trustees can take action. With this provision, the student would have to wait 3 days to get back into school. We feel this section would cause an undue hardship.

MELOY-The opponents seem all to like the idea, but have specific problems. I hope the committee can take care of some of these problems. I didn't realize that the individual option to ask for an open meeting had been taken out, and amendments have been given. With respect to the detrimental effects, again the statute provides the meeting holder with the ability to make these determinations. I don't think the the word "agency" intends to exclude local governments. I should also say that the notice requirement does have an emergency clause in it. I might also point out to Mr. Lohn that Executive Sessions in legislative committees have been open since the new constitution took effect. You can't even close them for individual privacy, and I think we follow this to the letter. The 72 hour rule just clarifies the notice provision. If this committee feels that this is too great a burden, I don't have any possessory feelings about it. The agenda is not engraved in stone. If something comes up when the meeting is convened, they can still discuss it. I know most local government officials will not be trying to avoid this. As far as mailing, this is done in some ways already. I wasn't sure about Rep. Smith's comments about the public officers requesting open meetings. This is presently in the statute, and with the amendments, it would stay. Under the constitution, individual privacy is the only reason you can close a meeting. The difference between this and HB 249 is the closing of a school board for land acquisition discussions. We discussed this on the floor two years ago, and I still believe that this is not just cause for closing a meeting. Without striking the sections on page 2, you can't close any meeting for individual privacy.

O'CONNELL-What about a public employee being discussed, and not being notified of the meeting? MELOY-That is what we are addressing in the notice provision. MULAR-In your opening statements you compared lines 9 and 5 with the constitution - what section of the constitution? MELOY-Section 9 of Article 3--No person shall be deprived of the right to observe the deliberations of boards except in the case of individual privacy. MULAR-What is your opinion of the strategy sessions? MELOY-That statute could be subject to a court challenge; however, I don't think that anyone is going to challenge that section. The people who might are sitting behind you, and I have discussed this with them, and I think they see the problem and disadvantage the person is put to by having to discuss this in public. MULAR-Do you consider land acquisition strategic? MELOY-No. BARDANOUVE-In as much as you are an ivory tower graduate and you have said there is a possibility of a constitutional question, it seems you ought to have a severability clause on this bill. MELOY-I have never been fond of severability clauses. I have no opposition to adding one. BARDANOUVE-What is the reference about conference calls? MELOY-The statute says that all meetings shall be open; this section includes conference calls with a quorum of the body when they are discussing something about a meeting. All you do is find a meeting phone, because two members are usually in one space. Conference call meetings are held for convenience. BARDANOUVE-So this is legal if it is open to the press? MELOY-Yes. BARDANOUVE-What is section 19-201? MELOY-Advertising on radio or TV constitutes sufficient notice. BARDANOUVE-Haven't whole laws been stricken by not having a severability clause? MELOY-Yes, you're right, and I propose amendments to add such a clause. LIEN-We have mandated many boards, bureaus, and agencies to have meetings on a regular basis; how can we get around this 72 hour thing - this could be used for harrassment in small districts. MELOY-You will always have problems where many of the decisions are made in meetings prior to the actual meeting. I had the feeling that this section would be the most difficult. But if we don't have this, it will be taken advantage of. TOWER-I feel that again we are trying to legislate morals, and this describes regular meetings, locations, room sizes, etc. We have the same situation that Lien does. MELOY-If you adopt the avoidability, and it was taken to court - then this could protect us from these informal local government meetings. Most local governments try to observe this, and I don't think this will

be such a problem. ROBBINS-What about where regular meetings are required by law, would they be required to give notice? MELOY-I think the statute is the notice. ROBBINS-What about cemetery boards, airport boards, boards who meet when they feel like it for management, with they have to give notice? MELOY-They are spending the public's money; and therefore, should be done with the proper notice. This doesn't require any newspaper publication.

EXECUTIVE SESSION

HB 249 & HB 302--Ryan moved HB 302 DO NOT PASS, with Meyer seconding. Bardanouve made a substitute motion of DO PASS, seconded by Kanduch. Robbins moved that both bills be put in a subcommittee, seconded by Bardanouve.

RYAN-I think the constitution covers this sufficiently, and that this is a poor piece of legislation that doesn't cover it. ROBBINS-Perhaps we will be in an interim committee, but I think these should be considered for their merits. BARDANOUVE-I believe HB 302 is trying to clarify and further the effects of the law as written in the constitution. LIEN-I have sympathy with this question, and I have many problems with the new language inserted. It is not just cleaning up the language, we are changing this quite drastically. KROPP-This will create a real problem in my area. SMITH-That would also be true in my area.

The motion to put both bills in a subcommittee passed with Ryan, Feda, Kropp, Meyer, Smith, and Tower voting no. The subcommittee appointed included Lien as chairman, with Kanduch and Feda. Helen O'Connell asked if she might participate, and the chairman agreed.

MEETING ADJOURNED - 12:15 a.m.

Joe Brand

Joe Brand, Chairman

Anita C. Sierke

Anita C. Sierke, Secretary

STATE ADMINISTRATION COMMITTEE February 4, 1977

Chairman Brand called the meeting to order at 9:00 a.m., roll was taken with Menahan excused, and Lien in Taxation, Bardanouve coming in late from a subcommittee meeting, and Kanduch, Meyer and Smith just late.

Dick Hargesheimer submitted his summary, see attachment #1.

EXECUTIVE SESSION

HB 249 & HB 302-O'Connell gave a subcommittee report (see attachment #2), then proceeded to move DO NOT PASS on HB 249, Feda seconded the motion, and it carried unanimously. Upon consulting the subcommittee report, the secretary confirmed that the sponsors had requested that HB 249 be held in committee for the outcome of HB 302. Kropp moved to reconsider HB 249 and hold it in committee, Mular seconded the motion, and it carried with Ryan voting no.

O'Connell read the amendments to HB 302, and moved acceptance of said amendments, Feda seconded, and the motion carried unanimously. She then moved AS AMENDED DO PASS, Kanduch seconded, and the motion carried, with Feda and Smith voting no.

EXECUTIVE SESSION CLOSED

HB 519-Rep. Waldron, sponsor--Last year the Human Rights Commission ruled that mandatory retirement ages were unconstitutional. There are some exceptions, but they have to be determined in court. Where age is an integral part of the benefit plan, there can't be a requirement to retire or to remain until a certain age. The Human Rights Act has implied repealers, but the courts are reluctant to accept such things. This bill is necessary. This doesn't remove limits of age or service. Public employees are the only ones who have specific requirements. This doesn't affect PERS in any detrimental fashion.

MICHAEL PICHETTE, Secretary, State Democratic Party--This is part of the current party platform, so we support.

STAN GERKE, AFSCME, AFL-CIO--Whereas the Council believes in nondiscriminatory laws, so they do not support any laws giving mandatory age of retirement.

CHARLES BANDEROB, Ballentine, Montana--The Montana Senior Citizens Asso. feels that mandatory retirement ages deal a severe blow with senior citizens. Many people have many good years left ahead at 65.

DUANE TOOLE, Montana Highway Patrol--We would oppose the section dealing with the Highway Patrol. We are faced with management problems if our retirement age is not maintained. A person of 65 can no longer perform the duties necessary in my line of work. The U.S. Supreme Court enmasse has passed 50 as the mandatory age for retirement of policemen. The state wants to provide quality service.

WALDRON-A retirement system based upon mandatory age limits is pernicious. It is a was to get rid of useful people. I urge your support.

MULAR-What about appeals and litigation? WALDRON-We have always had alot of litigation about retirement. As far as law enforcement, I don't see a number of increases in the cases brought in. BRAND-What would this do with employment of young people? WALDRON-I don't have any figures; but you don't create jobs by putting other people out; you have a strong enough economy that there are jobs for everyone. MENAHAN-How

45th LEGISLATIVE SESSION

COMMITTEE ON State Administration

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
493	2-15-77	3-14-77	3-31-77					3-30-77	
263	2-26-77	3-14-77 3-19-77	3-19-77 3-31-77						
		3-25-77 4-6-77	4-1-77				3-19-77	3-25-77	
506	2-16-77	3-14-77	3-26-77 Without Recommendation						
605	2-19-77	3-18-77	Tabled 4-2-77						
623	2-19-77	3-18-77	3-18-77				3-18-77		
302	2-18-77	3-16-77	3-31-77					3-30-77	
634	2-18-77	3-16-77	3-26-77					3-23-77	
494	2-17-77	3-16-77	3-26-77					3-23-77	
512	2-17-77	3-19-77	4-2-77					4-2-77	
436	2-22-77	3-12-77	3-12-77				3-12-77		
566	2-22-77	3-12-77	3-30-77						3-30-77
641	2-21-77	3-18-77	3-18-77				3-18-77		
645	2-21-77	3-18-77	3-18-77				3-18-77		
229	2-24-77	3-30-77	Tabled 3-30-77						
230	2-24-77	3-14-77	3-14-77				3-14-77		
63	2-25-77	3-19-77	3-19-77				3-19-77		

MINUTES OF THE MEETING
SENATE STATE ADMINISTRATION COMMITTEE
MARCH 16, 1977

The meeting was called to order by Senator Towe, Chairman, at 11:00 a.m. in the Governor's Reception Room of the Capitol Building. Committee members present were Senators Towe, Rasmussen, Jergeson, Blaylock, Brown, Roskie, Devine and Story.

The following bills were discussed: HB 726
HJR 65
HB 494
HB 302
HB 634

HOUSE BILL 726, HJR 65

Representative Brand, District 28, sponsor of the bill and the resolution stated the purpose of both pieces of legislation is to tranfer the old prison at Deer Lodge to the city of Deer Lodge. He presented a booklet to the committee stating the work that has been done by the community in anticipation of receiving the old prison (attached #1).

PROPONENTS

James Blodgett, representing Deer Lodge and Powell County Museum and Arts Foundation, stated they compiled the booklet (attached #1). He noted the prison would revert to the state if the guidelines for protection and preservation of the site are not adhered to. He urged support for the bill.

Leo Berry, State Land Commissioner, presented his testimony to the committee (attached #2).

There were no opponents to the bill and no further proponents and the hearing was closed.

HOUSE BILL 494

Representative Gerke, District 62, stated the bill is to provide for the sale of institutions no longer in use by the state. He further stated this bill was most specifically aimed at the sale of the former Children's Home in Twin Bridges but would apply to other sites as indicat

PROPONENTS

Representative Keyser, District 81, supported the bill as the financial impact on the community is too great for them to absorb any longer.

Robert Eohn, Governor's Office, stated his support of the bill.

Leo Berry, State Land Commissioner, presented his testimony to the committee in support of the bill (attached #3).

John Anthony, Department of Community Affairs, urged support of the bill and presented material to the committee in support of the bill (attached #4).

Marie McAlear, Chairperson of the Citizens Committee for Utilization of the Children's Center, stated her support of the bill. She introduced members of the Junior and Senior classes of the Twin Bridges High School who attended the hearing as interested spectators.

Byron Byers, a member of the Citizens Committee, stated his support of the bill.

Don Kitt, principal of the High School, stated his support of the bill.

Larry Clark and Fawn Kaighn presented their written testimony in support of the bill to the commitee. They are students at Twin Bridges High School. (attached #4)

There were no further proponents to the bill and no opponents and the hearing was closed.

HOUSE BILL 302

Representative Meloy, District 29, sponsor of the bill, stated the purpose of the bill is to close some loopholes in the open meeting laws. He stated some boards and agencies are taking advantage of loopholes although most are conforming to the intent of the bill quite well. He stated this is essentially a recodification bill but with some tightening of the restrictions. He reviewed the bill with the committee.

PROPONENTS

George Remington, Publisher of the Billings Gazette, presented his written testimony to the committee (attached #5).

Sam Gilully, Secretary-Manager of the Montana Press Association, presented his written testimony to the committee (attached #6).

Ron Semple, Publisher of the Independent Record in Helena, and Chairman of the Freedom of Information Committee of the Montana Press Association, urged support of the bill.

Bob Mc Giffert, representing himself, presented his written statement in support of the bill to the committee (attached #7).

Chad Smith, Montana School Board Association, spoke in support of the bill. He felt there should be some changes in the bill and hoped the committee would be cognizant of those areas.

Charlie Dell, representing Common Cause, strongly supported the bill.

Jacquelyn McGiffert, representing herself, stated she is a member of the Missoula City Council and Health Board, stated she supports the bill and added if you don't want public scrutiny, you shouldn't hold

hold public office.

Bill Merrick, Montana Broadcaster Association, presented his testimony in support of the bill (attached #8).

Marilyn Wessel, News Director, KBMN, Bozeman, presented her testimony in support of the bill (attached #9).

Steve Sebenor, News Director, KBOW, Butte, stated his support of the bill and urged the tape recorder provision be reinstated in the bill.

Jerry Holloran urged support of the bill.

There being no further proponents and no opponents to the bill, the hearing was closed.

HOUSE BILL 634

Representative Scully, District 76, sponsor of the bill, stated the bill expands Gallatin and Park Counties to include portions of Yellowstone Park which are in the state but not in a county.

There being no proponents and and no opponents, after discussion by members of the committee, the hearing was closed.

There being no further business, the meeting was adjourned to reconvene March 16 upon adjournment of the Senate.

Thomas E. Towe, Chairman

#5

TO: COMMITTEE ON STATE ADMINISTRATION, MONTANA STATE SENATE

FROM: GEORGE D. REMINGTON

RE: HOUSE BILL 302

BEST COPY AVAILABLE

Mr. Chairman, Members of the Committee;

My name is George Remington. I am publisher of The Billings Gazette and first vice president of The Montana Press Association.

I am appearing in support of House Bill 302.

This bill, which passed the House of Representatives by the substantial margin of 78 to 18, enhances Montana's Open Meeting Law by giving the public better access to meetings of public agencies. I believe it also will help restore public confidence in government if deliberations are conducted and decisions made in the open rather than in back rooms of governmental office buildings.

House Bill 302 amends the present law by deleting the provision that requires open meetings only when "any action is taken." Surely an informed public should be aware of deliberations that resulted in the action. The Legislature, in committees and on the floor, conducts its deliberations in public. Executive agencies should do likewise.

Another important feature of this bill would require agencies of state government to give a 72-hour notice of meetings. What good is a public meeting if the public is not made aware of it?

Also beneficial is a requirement that minutes must be kept of open meetings, and contents of the minutes are specified. This assures a public record, even though the public or the press is not in attendance at a meeting.

In keeping with the spirit of the State Constitution, the presiding officer retains the authority to close a meeting if he determines that "the demands of individual privacy clearly exceed the merits of public disclosure."

However, House Bill 302 amends the present law to allow the individual concerned to waive his right of privacy if he or she wishes the matter to be heard in open session. This is a protection against star-chamber proceedings by public agencies.

There is a provision in this bill to permit closing a meeting to discuss strategy in collective bargaining or litigation. I have no argument with this. It seems only fair as long as the other side in collective bargaining or litigation can develop its strategy in privacy.

I am sure this committee agrees that an informed and enlightened public promotes more responsible and accountable government and for that reason will give its approval to House Bill 302.

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Montana Press Association and Montana Advertising Services, Inc.

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SECRETARY: LARRY BOWLER,
DANIELS COUNTY LEADER

March 7, 1977

Statement on HB 302

My name is Sam Gilluly and I am Secretary-Manager of the Montana Press Association an organization of 77 newspapers in Montana.

HB 302 will improve the people's right-to-know and thus provide more open government.

What it does is really what has been done by you as legislators in the last few years. I refer to the first legislative session I covered in 1961, as compared with this session and those in recent years. You have made your proceedings much more open and acessible to the public.

I can recall the time when it was sometimes difficult to find out when a committee was meeting or even, sometimes, where it was meeting. I can also recall so-called executive sessions that were actually cover-ups.

In Montana, the problem of open meetings is a continuing and serious one both for the press and the public. This legislation should and will help improve the situation.

One other witness representing the Montana Press Association was unable to be here because he was called for jury duty in Great Falls this morning. He is Mr. William James, Editor of the Great Falls Tribune. Mr. James expressed his thoughts on HB 302 (and on another bill) in his column Sunday morning. I am attaching a clipping of his statement.

I ask for your support and approval of HB 302.

Letter FROM the Publisher

The public has the right to know

Two bills concerning the right of the public to obtain information it wouldn't get if there weren't a free press are scheduled for Senate committee hearings this week.

HB 302, sponsored by Rep. Mike Meloy, D-Helena, would revise the Montana open meeting law. The bill would strengthen the right of the press to cover meetings of interest to the public.

THE BILL, supported in House hearings by the Montana Broadcasters Association as well as the Montana Press Association, passed the House by a 78 to 18 margin. A Senate committee hearing is scheduled on the bill Monday morning.

The bill is of vital interest to the public because it allows the press, acting as a representative of the public, to report what government agencies and committees are doing.

A survey conducted by the Montana Press Association in 1971 revealed that it was common in Montana for many government branches to try to hide information that belonged to the public. Until the press started screaming that state laws requiring open records and open meetings were being ignored, city, county and school meetings frequently were secret.

ANOTHER IMPORTANT BILL, HB 116, sponsored by Rep. Dorothy Bradley, D-Bozeman, also was passed by the House and is scheduled for a Senate committee hearing Thursday morning.

That bill strengthens the state's present shield law which allows newsmen to not have to disclose the source of their information for stories. HB 116 would expand the shield law by saying that if a reporter discloses some information, he would not have to disclose it all.

A shield law is considered of major importance by the press. Many cases of corruption in government would never have been disclosed to the public if people giving tips about the corruption had not known reporters would protect their sources. In recent years, numerous reporters have gone to jail to protect that principle.

AN EXCELLENT explanation of why a free press is needed to inform the public was presented a few years ago by U.S. Sen. Lowell Weicker Jr., R-Conn. Talking about a bill he introduced to protect the free flow of information to the public by allowing the press to protect sources, Weicker said:

"This legislation is not a newsman's privilege law—though that's what it may be called by some—because it's not for newsmen. It's for the American public."

If newsmen are forced to reveal their sources, Weicker said, there is every danger that some of those sources will dry up. "That will infringe upon your right to hear the full story," he added. "That is what we are protecting. We are protecting a constitutional right—not somebody's privilege."

Weicker continued that it is the public interest to see that the work of America is put in the open. "The news media, with their unique status, are virtually the only ombudsman the public has. It is the role of the journalist to probe, to dig, to exhume suppressed information, to expose dishonesty and corruption, to highlight quiet good. The free flow of news from many sources through many people is the best guarantee that nobody steals America."

William D. Jarma

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EXHIBIT 11

NAME: ROBERT C. MCGIFFERT DATE: 3/16/76

ADDRESS: 432 KING ST., MISSOULA

PHONE: 549-8672

REPRESENTING WHOM? SELF

APPEARING ON WHICH PROPOSAL: HB 302

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: Statement attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

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Statement on HB302

My interest in this bill is partly an ex-newspaperman's interest, forged in many battles with local officials over secret meetings disguised as committee conferences or barbecues or cocktail parties, and I am happy to line up with the Press Association and to endorse the views expressed by Sam Gilluly and Ron Semple and George Remington.

But it's also a citizen's interest, rooted in concern over the growing power of government and the increasingly difficult problem of keeping informed about what its agents are doing.

The press is naturally and properly the most noticeable advocate of stronger access laws at all levels, but it is not merely mouthing a shibboleth when it says that it is really defending the people's right to know.

Secrecy is as old as government and there's hardly a courthouse or city hall or schbol administration building anywhere in the country that can't provide horror stories about public servants trying to keep the details of their public service from the public they serve.

The battle for openness will never be won, but it will surely be lost if we don't keep fighting it. And in Montana we may have to fight just a little harder than elsewhere because of the well-intention but insidiously corrosive language in which the 1972 Constitution imparied the right to know in the guise of protecting it. This it did of course, by providing for public exclusion from meetings and records whenever the demand for individual privacy clearly exceeds the merits of public disclosure.

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I've never run into a matter of public business in which the public's right to know was less meritorious than an individual's right to privacy, but that is the language and we are stuck with it until such time as Article II Section 9 has caused such monumental trouble that it's amended.

So long as an abstraction like the demand of privacy offers government infinite opportunity for capricious behavior behind closed doors, Montana will need the strongest access law it can get. And this for the benefit of the people, bot the press.

I speak not merely of the people in sparsely populated areas where the absence of strong daily or weekly newspapers leaves the public at the mercy of the publicity handout. They surely do need a strong law to ensure their right of access to information. But the people of urban areas need it, too, despite their fiduciaries in the press and broadcasting.

A year ago a school board in Missoula prematurely approved a three-year extension of the contract of a controversial superintendnet of schools. The board adhered to the letter of the law by taking action at a public meeting. But the agenda for that meeting made no mention of the superintendent's contract, which had a year and a half still to run. And the action came at 2:30 in the morning, after the public meeting had been interrupted for a secret executive session that lasted 2½ hours.

The press was not present at the end. After all, any council or board can outlast a reporter with a deadline unless his paper is well enough staffed to provide coverage in platoons. So the press was not the principal victim of the board's unconstitutional ploy.

The bill before you won't stop shenanigans like these, but it will help.

NAME: Jacqueline A McGuire DATE: 3/16/77

ADDRESS: 432 King Missoula

PHONE: 549-8672

REPRESENTING WHOM? self

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APPEARING ON WHICH PROPOSAL: HB 302

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: As a member of the Missoula City Council and the Missoula City-County Board of Health, I support the fullest possible open meeting laws. In my experience, public officials who would prefer to conduct business as secretly as possible choose that course mostly through fear of possible embarrassment. But I feel that if you don't want public scrutiny, you shouldn't hold public office. Lastly, I find that those officials who are most wary of full coverage often see that coverage simply as enlightening the papers or the reporters rather than the public. And sometimes officials dislike a reporter on a matter of opinion or ability, they see subverting the reporter as merely that. Not as keeping citizens from knowing what is going on. I find that the more you think of your business as the public's business, the easier and more natural it is to keep everything open.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

EX 8

montana broadcasters association

March 7, 1977

STATEMENT TO THE SENATE COMMITTEE
ON STATE ADMINISTRATION

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

MY NAME IS WILLIAM A. MERRICK. I AM A REGISTERED LOBBYIST FOR THE MONTANA BROADCASTERS ASSOCIATION. MEMBERSHIP OF THIS ASSOCIATION INCLUDES 75% OF THE RADIO AND TELEVISION STATIONS IN MONTANA....48 STATIONS IN ALL.

THE IMPROVEMENTS TO THE PRESENT OPEN MEETING LAW SET OUT IN THIS BILL BEFORE YOUR COMMITTEE ARE NEEDED TO IMPROVE ACCESS TO NEWS PERSONNEL AS A LINK TO THE PUBLIC.

BROADCAST NEWS PEOPLE HAVE HAD PROBLEMS IN REPORTING MEETINGS IN MONTANA. UNANNOUNCED OR RUMP SESSIONS HAVE BEEN USED TO DISCUSS THE ISSUES AND AFTERWARD TOKEN MEETINGS ARE USED TO COMPLY WITH PRESENT LAW. THIS METHOD KEEPS THE REAL FACTS FROM GETTING REPORTED IN MOST CASES.

IF THE PUBLIC THAT MUST ULTIMATELY STAND IN JUDGEMENT OF GOVERNMENT ARE KEPT IN THE DARK, WE HAVE LOST OUR DEMOCRATIC FORM OF GOVERNMENT. BROADCAST NEWS PEOPLE ARE CHARGED WITH THE RESPONSIBILITY OF BEING THE EYES AND EARS OF THE PUBLIC. HB302 WILL IMPROVE THESE CHANNELS OF COMMUNICATION BETWEEN THE CITIZENS OF MONTANA AND THEIR GOVERNMENT.

WE STRONGLY FAVOR THE PASSAGE OF HB 302.

helena, montana 59601 phone 406/442-3961

I WOULD LIKE TO SUGGEST THAT THE PORTION OF THIS BILL THAT WAS AMENDED OUT IN THE HOUSE PROCEEDINGS BE REINSTATED. THIS IS THE PORTION WHICH REFERS TO PERMITTING TAPE RECORDING OF OPEN MEETINGS. I WOULD ALSO LIKE TO SUGGEST A FOUR WORD AMENDMENT ON PAGE 4, LINE 6, IN WHICH THE FOUR WORDS "BY RADIO OR TELEVISION" BE INSERTED AFTER THE WORD "GIVEN". THIS WOULD NOT CHANGE THE SECTION BUT WOULD CLARIFY IT FOR PEOPLE WHO READ THE BILL IN THE FUTURE.

#9

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I AM [illegible] MARILYN MESSEL AND I AM THE NEWS DIRECTOR AT KMMS-TV IN BOZEMAN. I STRONGLY SUPPORT THE AMENDED OPEN MEETING LAW BEFORE YOU.

THE PRESENT BILL WHICH WE HAD ALL SUPPOSED TO BE VERY EFFECTIVE DOES HAVE A SIGNIFICANT LOOPHOLE WHICH THIS VERSION WOULD CLOSE.

LET ME GIVE YOU AN EXAMPLE OF HOW THAT LOOPHOLE HAS BEEN USED. ON JANUARY 19 OF THIS YEAR, THE BOZEMAN CITY COMMISSION CHOSE TO EJECT THE PUBLIC AND THE MEDIA FROM A CRITICAL INFORMATION MEETING INVOLVING SEVERAL MILLION DOLLARS IN FEDERAL AND LOCAL TAX MONEY FOR A WASTEWATER TREATMENT PLANT IN GALLATIN COUNTY.

THE PUBLIC REASON WAS THAT NO ACTION WOULD BE TAKEN AT THE MEETING AND AS SPECIFIED IN THE OLD LAW, IT WAS LEGAL TO CLOSE THE SESSION. PRIVATELY OFFICIALS SAID THE TREATMENT PLANT HAD BEEN A HOTLY CONTESTED ISSUE FOR MORE THAN TWO YEARS AND THEY WERE AFRAID PUBLIC PARTICIPATION WOULD OPEN UP OLD WOUNDS.

THE EFFECT OF THE SECRET MEETING WAS THAT ONE OF THE LEADING PARTICIPATING SCIENTISTS CALLED ME AFTERWARDS AND EXPRESSED DISMAY AT THE REASONS FOR CLOSING THE MEETING. HE SAID HE THOUGHT IT WAS CRITICAL THAT THE PUBLIC UNDERSTAND THE TECHNICAL SIDE OF SUCH COSTLY ISSUES AND HE ASKED FOR A RADIO FORUM TO EXPLAIN WHAT HAD GONE ON.

UNFORTUNATELY THAT IS NOT AN ISOLATED INCIDENT. OUR CITY COMMISSION ALSO USES THE SAME LOOPHOLE TO JUSTIFY WEEKLY PRIVATE LUNCHEONS PRECEEDING THEIR REGULAR MEETING AT WHICH THEY DISCUSS CRITICAL AGENDA ITEMS.

TO THE EXTENT THAT THE BILL BEFORE YOU CAN ELIMINATE THAT LOOPHOLE WHICH I BELIEVE VIOLATES THE SPIRIT OF THE LAW, I SUPPORT IT----WITH ONE RESERVATION.

PLEASE CONSIDER SERIOUSLY RESTORING THE SECTION WHICH ALLOWS BROADCAST REPORTERS TO USE THEIR TAPE RECORDERS IN PUBLIC MEETINGS. TO USE A RECORDER IS A TOOL OF THE TRADE AS MUCH AS A PENCIL AND PAPER REPORTERS NOTEBOOK AND FAR MORE ACCURATE.

Thank you.

March 16, 1977
Testimony for the
Senate Committee on
Administration

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BERT GASKILL
Editor

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16 March, 1977

To: Members of the Montana Senate
Re: Open meeting law

The Senate should join the House in approval of HB302, the revised open meeting law.

It appears to be a strengthening of the public's right to know, and that is our only concern.

We have used the present law on many occasions to open doors at meetings that members of public bodies have tried to keep closed.

All of our reporters carry copies of the present law. Reading the law, when needed, has resulted generally in opening proposed closed sessions.

We respect the right of privacy for the individual.

But, we believe there can be no blanket law on privacy. Each proposed closure of any hearing on the basis of privacy must be weighed carefully. HB302 apparently will give the presiding officer this responsibility.

Therefore, we assume the public's rights will be uppermost in the decision, and will hope there are few, if any, closed meetings.

We respectfully request passage of HB302 in the Senate, and urge that it become law.

Bert Gaskill

MINUTES OF THE MEETING
SENATE STATE ADMINISTRATION COMMITTEE
MARCH 30, 1977

The meeting was called to order by Senator Towe, Chairman, at 11:00 a.m. in Room 410 of the Capitol Building. Committee members present were Senators Towe, Story, Brown, Jergeson, Roskie, and Blaylock.

The following bills were discussed: SJR 46
HB 229
HJR 34
HB 791
HJR 85
HB 506
HB 566
HB 493
HB 302

SENATE JOINT RESOLUTION 46

Senator Story assumed the chair to allow Senator Towe to present the bill.

Senator Towe, District 34, sponsor of the resolution, stated the purpose of the bill is to express concern about the overlap of functions and the duplication of services and therefore extra expense in state agencies which deal with protective services. It requests the committee on priorities to designate the appropriate standing committee to study the makeup of the agencies delivering services to and protecting through advocacy and appeal processes the rights of persons and recommend alternatives structured to alleviate the deficiencies found. He stated such areas as Developmental Disabilities, Family Planning, Senior Citizens, Human Rights, Womens Bureau, Board of Visitors as a few examples, are in need of independence from the agencies which they must review or deal with.

PROPONENTS

Ann Mary Dussault, Representative, District 95, spoke in support of the bill especially the section dealing with advocacy functions

There being no further proponents and no opponents, the hearing was closed.

Senator Roskie moved Senate Joint Resolution 46 Be Adopted. THE MOTION CARRIED UNANIMOUSLY.

Senator Towe assumed the Chair.

HOUSE BILL 229

The Chairman stated Representative Gerke, sponsor of the bill, indicated to him the bill should be tabled as it was predicated on House Bill 122 which did not pass.

Senator Blaylock moved House Bill 229 Be Tabled. THE MOTION CARRIED

UNANIMOUSLY.

HOUSE JOINT RESOLUTION 34

Representative Driscoll, District 91, sponsor of the bill, stated the bill is a companion measure to House Bill 808 which is now in the House Appropriations Committee. The resolution urges the Governor to appoint an ad hoc committee to prepare legislation for submission to the 46th Legislature to implement the public funding of campaigns in Montana.

There were no opponents and no proponents to the bill and the hearing was closed.

Senator Blaylock moved House Joint Resolution 34 Be Concurred In. THE MOTION CARRIED WITH SENATOR STORY VOTING NO.

HOUSE BILL 791

Senator Story moved House Bill 791 Be Concurred In and transferred to the Fish and Game Committee. THE MOTION CARRIED WITH SENATORS BLAYLOCK AND JERGESON VOTING NO.

HOUSE JOINT RESOLUTION 85

The resolution had already been passed but the opportunity was to be extended to the absent committee members to vote on the bill. Senators Towe and Jergeson voted yea and the bill was to be sent out of committee.

HOUSE BILL 506

The only discussion of the bill was as to who would carry it on the floor and Senator Blaylock agreed to carry the bill.

HOUSE BILL 566

The bill had been voted on and the motion to be concurred in had failed. A vote not to concur had not been taken and the bill was being held for that action. Senator Roskie moved House Bill 566 Be Not Concurred In. THE MOTION CARRIED WITH SENATORS JERGESON, TOWE, AND BLAYLOCK VOTING NO.

HOUSE BILL 493

Senator Roskie moved the amend the bill as per the attached committee report. THE MOTION CARRIED UNANIMOUSLY.

Senator Story moved House Bill 493 Be Concurred In As Amended. THE MOTION CARRIED UNANIMOUSLY.

HOUSE BILL 302

Senator Brown moved to amend the bill as per amendments #1, 7, 9 and 10 on the standing committee report attached the the March 30 afternoon meeting minutes. THE MOTION CARRIED UNANIMOUSLY WITH SENATOR RASMUSSEN ABSTAINING.

ROLL CALL

State Administration COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 3/30/77

NAME	PRESENT	ABSENT	EXCUSED
Senator Thomas E. Towe, Chrm.	X		
Senator Pete Story, V. Chrm.	X		
Senator Bob Brown	X		
Senator A.T. "Tom" Rasmussen			X
Senator George F. Roskie	X		
Senator John W. Devine			X
Senator Greg Jergeson	X		
Senator Chet Blaylock	X		

MINUTES OF THE MEETING
SENATE STATE ADMINISTRATION COMMITTEE
MARCH 30, 1977

The meeting was called to order by Senator Towe, Chairman, at 4:40 p.m. in Room 410 of the Capitol Building. Committee members present were Senators Towe, Rasmussen, Story, Jergeson, Blaylock, and Devine. Senators Roskie and Brown were absent.

The following bills were discussed: HB 302
HB 795

HOUSE BILL 302

The action on the bill was continued from March 30 morning committee meeting minutes.

Senator Jergeson moved amendment # 2 and amendment #8 on the attached committee report. THE MOTION CARRIED UNANIMOUSLY.

Senator Rasmussen moved amendment #5 on the attached committee report. THE MOTION CARRIED UNANIMOUSLY.

Senator Story moved amendments #3, 4, and 6 on the attached committee report. THE MOTION CARRIED UNANIMOUSLY.

Senator Jergeson moved House Bill 302 Be Concurred In As Amended. THE MOTION CARRIED WITH SENATORS DEVINE AND STORY VOTING NO.

HOUSE BILL 795

Senator Rasmussen moved to amend the bill as per the amendments on the attached committee report. THE MOTION CARRIED UNANIMOUSLY WITH SENATORS BROWN AND STORY VOTING NO ON AMENDMENTS # 2, 3, and 4.

Senator Rasmussen moved House Bill 795 Be Concurred In As Amended. THE MOTION CARRIED WITH SENATOR TOWE VOTING NO AND SENATOR ROSKIE ABSENT.

There being no further business, the meeting adjourned to reconvene April 1, 1977.

Thomas E. Towe

Thomas E. Towe, Chairman

STANDING COMMITTEE REPORT

March 31 19 77

MR. President

We, your committee on State Administration

having had under consideration House Bill No. 302

Respectfully report as follows: That House Bill No. 302,
third reading, be amended as follows:

1. Amend title, line 8.
Following: "MEETINGS;"
Strike: "REQUIRING ADVANCE WRITTEN NOTICE OF MEETINGS;"

2. Amend title, line 10.
Following: line 9
Insert: "PERMITTING TAPE RECORDINGS OF OPEN MEETINGS;"

3. Amend page 1, section 1, lines 18 and 19.
Following: "or"
Insert: "bodies, boards, bureaus, commissions, or"
Following: "agencies"
Strike: "(as defined in 82-4227)"
Insert: "other than conference, caucus, subcommittee, or other meetings not governed by Article V, section 10, of the Montana constitution,"

4. Amend page 2, section 1, line 12.
Following: "agency."
~~DELETE~~
Insert: " Meetings of the legislature governed by Article V, section 10, of the Montana constitution may not be closed."

Chairman.

STATE PUB. CO.
Helena, Mont.

5. Amend page 3, section 3, lines 10 through line 7 on page 4.
Following: line 9
Strike: section 3 in its entirety
Renumber: subsequent sections

6. Amend page 4, section 4, line 11.
Following: "required"
Insert: "by 82-3402"

7. Amend page 4, section 4, line 17.
Following: "body"
Strike: "or"
Insert: ","
Following: "agency"
Insert: ", or organization"

8. Amend page 5.
Following: line 3
Insert: "Section 5. There is a new R.C.M. section in Title 82, chapter 34, that reads as follows:
Recording. All or any part of a meeting of a public body or agency required to be open may be recorded by any person in attendance, by means of a tape recorder or any other means of sonic reproduction, as long as the act of recording does not actively interfere with the conduct of the meeting."
Renumber: subsequent sections

9. Amend page 5, section 5, line 6.
Following: "Any"
Strike: "agency"

10. Amend page 5, section 5, line 9.
Following: "within"
Strike: "90"
Insert: "30"

AND AS SO AMENDED, BE CONCURRED IN

BMW

Thomas E. Towe, Chairman

April 6, 1977

SENATE
COMMITTEE OF THE WHOLE

That House Bill No. 302 be amended as follows:

1. Amend Senate Standing Committee amendments dated April 2, 1977.
Following: amendment no. 2
Strike amendments no. 3 and 4 in their entirety

HOUSE BILL NO. 302

INTRODUCED BY MELOY, VINCENT,

HARPER, HUENNEKENS, DRISCOLL, DUSSAULT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE OPEN MEETINGS LAW; ALLOWING CLOSED MEETINGS FOR DISCUSSIONS OF COLLECTIVE BARGAINING OR LITIGATION; DEFINING APPROPRIATE MINUTES AND MEETINGS; ~~REQUIRING ADVANCE WRITTEN NOTICE OF MEETINGS; PERMITTING TAPE RECORDING OF OPEN MEETINGS;~~ PERMITTING TAPE RECORDINGS OF OPEN MEETINGS; PROVIDING FOR VOIDABILITY; AMENDING SECTIONS 82-3402 and 82-3403, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-3402, R.C.M. 1947, is amended to read as follows:

"82-3402. Meetings of public agencies to be open to public -- exceptions. All meetings of public or governmental ~~bodies, boards, bureaus, commissions, or~~ BODIES, BOARDS, BUREAUS, COMMISSIONS, OR agencies ~~as defined in 82-4227~~ (AS DEFINED IN 82-4227) ~~OTHER THAN CONFERENCE, CAUCUS, SUBCOMMITTEE, OR OTHER MEETINGS NOT GOVERNED BY ARTICLE V, SECTION 10, OF THE MONTANA CONSTITUTION,~~ of the state or any political subdivision of the state, or ~~organization~~ organizations or agencies supported in whole or in part by public funds, or expending public funds, ~~at which any action is taken by such public governmental body, board, bureau, commission, or agency of the state or any political subdivision of the state~~ shall be open to the public. Provided, however, the presiding officer of any meeting may close the meeting during the time ~~any of the following items are discussed,~~ the discussion relates to a matter of individual privacy, and then if, and only if, the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. THE RIGHT OF INDIVIDUAL PRIVACY MAY BE WAIVED BY THE INDIVIDUAL ABOUT WHOM THE DISCUSSION PERTAINS AND, IN THAT EVENT, THE MEETING SHALL BE OPEN. However, a meeting may be closed to discuss a strategy to be followed with respect to collective bargaining or litigation when an open meeting would have a detrimental effect on the bargaining or litigating position of the public agency. ~~MEETINGS OF THE LEGISLATURE GOVERNED BY ARTICLE V, SECTION 10, OF THE MONTANA CONSTITUTION MAY NOT BE CLOSED.~~

~~(1) The disciplining of any public officer or employee or any hearing on or of a complaint against a public officer or employee, unless the public officer or employee requests an open meeting.~~

~~(2) The employment, appointment, promotion, dismissal, demotion or resignation of any public officer or employee,~~

~~unless the public officer or employee requests an open meeting.~~

~~(3) The revocation of a license of any person licensed under the laws of the state or any political subdivision of the state, unless the person licensed requests an open meeting.~~

~~(4) law enforcement, crime prevention, probation or parole.~~"

Section 2. There is a new R.C.M. section in Title 82, chapter 34, that reads as follows:

Meeting defined. As used in this chapter, "meeting" means the convening of a quorum of the constituent membership of a public agency, whether corporal or by means of electronic equipment, to HEAR, discuss or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

~~Section 3. There is a new R.C.M. section in Title 82, chapter 34, that reads as follows:~~

~~Notice. (1) All public agencies OF STATE GOVERNMENT (AS DEFINED IN 82-4227) shall give written public notice of any regular, special, or rescheduled meeting required to be open no later than 72 hours before the meeting. The notice shall include the agenda, date, time, and place of the meeting.~~

~~(2) Written public notice shall include but need not~~

~~be limited to:~~

~~(a) either publication in the Montana administrative register or posting at the principal office of the public body or agency holding the meeting or, if no such office exists, at the building in which the meeting is to be held and in at least three other prominent places within the governmental unit; and~~

~~(b) mailing a copy of the notice to any person who requests notice of such meetings. Any such person shall be given notice of all special or rescheduled meetings in the same manner as is given to members of the public body or agency.~~

~~(3) In case of emergency situations, notice of a meeting may be given under 19-201 and not be subject to subsection (1) of this section.~~

Section 3. Section 82-3403, R.C.M. 1947, is amended to read as follows:

"82-3403. Minutes of meetings -- public inspection. (1) Appropriate minutes of all meetings ~~declared~~ required BY 82-3402 to be open, shall be kept and shall be available for inspection by the public.

(2) Such minutes shall include without limitation:

(a) date, time, and place of meeting;

(b) a list of the individual members of the public body or, agency, OR ORGANIZATION in attendance; and

(c) the substance of all matters proposed, discussed, or decided and, at the request of any member, a record, by individual members, of any votes taken."

~~Section 5. There is a new R.C.M. section in Title 82, chapter 34, that reads as follows:~~

~~Recording. All or any part of a meeting of a public body or agency required to be open may be recorded by any person in attendance, by means of a tape recorder or any other means of sonic reproduction, as long as the act of recording does not actively interfere with the conduct of the meeting.~~

SECTION 4. THERE IS A NEW R.C.M. SECTION IN TITLE 82, CHAPTER 34, THAT READS AS FOLLOWS:

Recording. All or any part of a meeting of a public body or agency required to be open may be recorded by any person in attendance, by means of a tape recorder or any other means of sonic reproduction, as long as the act of recording does not actively interfere with the conduct of the meeting.

Section 5. There is a new R.C.M. section in Title 82, chapter 34, that reads as follows:

Voidability. Any ~~agency~~ decision made in violation of 82-3402 ~~or [section 3 of this act]~~ may be declared void by a district court having jurisdiction. A suit to void any such decision must be commenced within ~~90~~ 30 days of the

decision.

SECTION 6. SEVERABILITY. IF A PART OF THIS ACT IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

-End-

HB 0302/05

HOUSE BILL NO. 302

INTRODUCED BY MELOY, VINCENT,

HARPER, HUENNEKENS, DRISCOLL, DUSSAULT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE OPEN MEETINGS LAW; ALLOWING CLOSED MEETINGS FOR DISCUSSIONS OF COLLECTIVE BARGAINING OR LITIGATION; DEFINING APPROPRIATE MINUTES AND MEETINGS; ~~REQUIRING ADVANCE WRITTEN NOTICE OF MEETINGS; PERMITTING TAPE RECORDING OF OPEN MEETINGS;~~ PERMITTING TAPE RECORDINGS OF OPEN MEETINGS; PROVIDING FOR VOIDABILITY; AMENDING SECTIONS 82-3402 and 82-3403, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-3402, R.C.M. 1947, is amended to read as follows:

"82-3402. Meetings of public agencies to be open to public -- exceptions. All meetings of public or governmental ~~bodies, boards, bureaus, commissions or~~ BODIES, BOARDS, BUREAUS, COMMISSIONS, OR ~~BODIES, BOARDS, BUREAUS, COMMISSIONS, OR~~ agencies ~~(as defined in 82-4227)~~ ~~(AS DEFINED IN 82-4227)~~ ~~OTHER THAN CONFERENCE, CAUCUS, SUBCOMMITTEE, OR OTHER MEETINGS NOT GOVERNED BY ARTICLE V, SECTION 10, OF THE MONTANA CONSTITUTION~~ of the state or any political subdivision of the state, or ~~organization~~ organizations or agencies supported in whole or in part by public funds, or expending public funds, ~~at which any action is taken by such public, governmental, body, board, bureau, commission, or agency of the state or any political subdivision of the state~~ shall be open to the public. Provided, however, the presiding officer of any meeting may close the meeting during the time ~~any of the following items are discussed,~~ the discussion relates to a matter of individual privacy, and then if, and only if, the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure~~.~~. THE RIGHT OF INDIVIDUAL PRIVACY MAY BE WAIVED BY THE INDIVIDUAL ABOUT WHOM THE DISCUSSION PERTAINS AND, IN THAT EVENT, THE MEETING SHALL BE OPEN. However, a meeting may be closed to discuss a strategy to be followed with respect to collective bargaining or litigation when an open meeting would have a detrimental effect on the bargaining or litigating position of the public agency. ~~MEETINGS OF THE LEGISLATURE GOVERNED BY ARTICLE V, SECTION 10, OF THE MONTANA CONSTITUTION MAY NOT BE CLOSED.~~

~~(1) The disciplining of any public officer or employee, or any hearing on or of a complaint against a public officer or employee unless the public officer or employee requests an open meeting.~~

~~(2) The employment, appointment, promotion, dismissal,~~

~~demotion or resignation of any public officer or employee, unless the public officer or employee requests an open meeting.~~

~~(3) The revocation of a license of any person licensed under the laws of the state or any political subdivision of the state, unless the person licensed requests an open meeting.~~

~~(4) law enforcement, crime prevention, probation or parole."~~

Section 2. There is a new R.C.M. section in Title 82, chapter 34, that reads as follows:

Meeting defined. As used in this chapter, "meeting" means the convening of a quorum of the constituent membership of a public agency, whether corporal or by means of electronic equipment, to HEAR, discuss or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

~~Section 3. There is a new R.C.M. section in Title 82, chapter 34, that reads as follows:~~

~~Notice. (1) All public agencies OF STATE GOVERNMENT AS DEFINED IN 82-4227 shall give written public notice of any regular, specially or rescheduled meeting required to be open no later than 72 hours before the meeting. The notice shall include the agenda, date, time, and place of the meeting.~~

~~(2) Written public notice shall include but need not be limited to:~~

~~(a) either publication in the Montana administrative register or posting at the principal office of the public body or agency holding the meeting or, if no such office exists, at the building in which the meeting is to be held and in at least three other prominent places within the governmental unit; and~~

~~(b) mailing a copy of the notice to any person who requests notice of such meetings. Any such person shall be given notice of all special or rescheduled meetings in the same manner as is given to members of the public body or agency.~~

~~(3) In case of emergency situations, notice of a meeting may be given under 19-201 and not be subject to subsection (1) of this section.~~

Section 3. Section 82-3403, R.C.M. 1947, is amended to read as follows:

"82-3403. Minutes of meetings -- public inspection. (1) Appropriate minutes of all meetings declared required BY 82-3402 to be open, shall be kept and shall be available for inspection by the public.

(2) Such minutes shall include without limitation:

(a) date, time, and place of meeting;

(b) a list of the individual members of the public

body ~~or~~, agency, OR ORGANIZATION in attendance; and

(c) the substance of all matters proposed, discussed, or decided and, at the request of any member, a record, by individual members, of any votes taken."

~~Section 5. There is a new R.C.M. section in Title 82, chapter 34, that reads as follows:~~

~~Recording. All or any part of a meeting of a public body or agency required to be open may be recorded by any person in attendance, by means of a tape recorder or any other means of sonic reproduction, as long as the act of recording does not actively interfere with the conduct of the meeting.~~

SECTION 4. THERE IS A NEW R.C.M. SECTION IN TITLE 82, CHAPTER 34, THAT READS AS FOLLOWS:

Recording. Accredited press representatives may not be excluded from any open meeting under this act and may not be prohibited from taking photographs, televising, or recording such meetings. The presiding officer may assure that such activities do not interfere with the conduct of the meeting.

~~SECTION 5. THERE IS A NEW R.C.M. SECTION IN TITLE 82, CHAPTER 34, THAT READS AS FOLLOWS:~~

~~Recording. All or any part of a meeting of a public body or agency required to be open may be recorded by any person in attendance, by means of a tape recorder or any other means of sonic reproduction, as long as the act of~~

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Section 5. There is a new R.C.M. section in Title 82, chapter 34, that reads as follows:

Voidability. Any ~~agency~~ decision made in violation of 82-3402 ~~or [section 3 of this act]~~ may be declared void by a district court having jurisdiction. A suit to void any such decision must be commenced within ~~90~~ 30 days of the decision.

SECTION 6. SEVERABILITY. IF A PART OF THIS ACT IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

-End-